IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 18 OF 1997

Ramsurat Rampyare Maurya .... Petitioner

versus

Pradeep Martamt Kulkarni & ors..... Respondents.

Mr. G.k.Masand for the petitioner
Mr. Mihir Desai for the respondent no.1.
Mr. Sunil Dighe for Respondent no.13.

CORAM; A.P. DESHPANDE, J.
DATED; 13TH JUNE, 2007

JUDGMENT;

1. By this petition, the petitioner takes an exception to the judgment and order passed by the School Tribunal whereby an appeal filed by the respondent no.1 came to be allowed holding that the present petitioner has superseded the claim of the respondent no.1 herein. Few facts that are necessary for adjudication of dispute are narrated hereinbelow.

2. The petitioner belongs to Scheduled Caste category of the backward class who came to be initially appointed as Assistant teacher with effect from 29-11-1980 in B.P.M. High School, which is administered by Bombay Suburban Education Society. It is undisputed that right from the date of the the

petitioner's appointment, he was a trained graduate teacher and thus entered in category 'C' of Schedule 'F" from the date of his appointment. IN October 1983 the petitioner came to be promoted to the post of Assistant Head Master by order dated 28-9-1983. None of the respondents or for that matter any other teacher questioned the correctness of the said appointment and as such the petitioner continued to serve in the post of Assistant Head Master. The management had reduced the petitioner in rank in the year 1985 but the said decision was challenged by the petitioner by filing an appeal before the Tribunal bearing Appeal No.65 of 1985 and by an interim order, the decision of the management was stayed. Ultimately the petitioner succeeded in appeal.

3. Aggrieved thereby the management filed a writ petition against the judgment of the School Tribunal and up-holding the said judgment, this court dismissed the writ petition filed by the management. It is thus clear that the legality and validity of the promotion granted to the petitioner to the post of Asstt. Head Master was up-held by reversing the decision of the management to reduce the petitioner in rank. Thereafter the petitioner continued to work in the post of Assistant Head Master. On account of occurrence of a vacancy in the year 1990, the

petitioner came to be promoted to the post of Head Master by an order dated 1-8-1990. It is this appointment granted by way of promotion to the post of Head Master, was challenged by filing an appeal before the Tribunal on the ground that the petitioner is not the senior most teacher in the school and thus he could not have been so appointed. It is the submission of the appellant before the Tribunal that the granting of promotion to the petitioner amounted to supersession of the claim of the respondent no.1. The Tribunal, as stated hereinabove, allowed the appeal and set aside the appointment of the petitioner. The Tribunal further directed to fill the post in accordance with the law.

4. While issuing rule, this court has stayed the impugned order and consequent of which the petitioner continued to occupy the post of Head Master.

5. The learned counsel for the petitioner has assailed the order passed by the Tribunal by placing reliance of Rule 3(3) of M.E.P.S.Rules read with Schedule F thereof. It is submitted by the learned counsel for the petitioner that Sub Rule (3) mandates that the management of a school shall fill up the post by appointing, the senior most member of the teaching staff in accordance with the guide-lines laid down in

Schedule F. Inviting my attention to Schedule F it is demonstrated that the seniority has to be determined in accordance with the categories wherein the teachers are fitted. Category 'A' includes Head Masters of secondary schools. Whereas category 'B' includes Heads of secondary school having an enrolment of students of 500 and below, and the Assistant Head Masters of secondary schools having more than 20 classes on the basis of the dates of their appointment to the respective posts. Whereas category 'C' includes all trained graduate teachers. It can thus be seen that the category mentioned in Schedule F represent the seniority and the school was obliged to appoint the petitioner by promotion to the post of Head Master as according to the guide-lines laid down in Schedule F, the petitioner's rank was above the respondent no.1, or for that matter all other teachers working in the school. It is re-iterated with the risk of repetition, that the appointment of the petitioner to the post of Assistant Head Master was not challenged at any point of time and thus the correctness or otherwise of the petitioner's promotion to the post of Assistant Head Master cannot be gone into and what is required to be seen is as to whether the promotion granted to the petitioner to the post of Head Master is in accordance with the law or not. The learned counsel for the petitioner then submits that

as the petitioner was in category ‘B’ and as the respondent no.1 was in category ‘C’ on the date of appointment of the petitioner to the post of Head Master, the petitioner alone could have been appointed to the post of Head Master and not the respondent no.1 or any other person from category ‘C’. The submission is well merited.

6. Per contra, the learned advocates appearing for the respondent no.1 Mr. Mihir Desai and for respondent no.13 Mr. Dighe, have submitted that the promotion granted to the petitioner to the post of Assistant Head Master was itself improper and illegal in as much as the petitioner was appointed by way of promotion to the post of Asstt. Head Master under mistaken belief that by application of roaster even an isolated post could be filled in by appointing a person from reserved category. The learned advocates have submitted that in the year 1983 when the petitioner was promoted as Asstt. Head Master the position of law was not clear and hence though the petitioner was wrongly appointed to the post of Asstt. Head Master his promotion was not challenged. It is the submission of the learned counsel that the legal position thereafter came to be settled in case of Dr. Chakradhar Paswan followed by Vasant Shivarao Ghuge and lastly by a constituted Bench of the Supreme Court

in Post Graduate Institute of Medical Education and Research,Chandigarh reported in 1998(2)Mh.L.J.page 353 wherein it was authoritatively held that there cannot be any reservation in a single isolated post even by applying roaster. In otherwords the submission is that the erroneous appointment of the petitioner to the post of Asstt. Head Master should not be construed as legal to enable the petitioner to assume the status of a person working in category 'B' of Schedule F. It is then contended by the learned advocates for the respondent nos.1 and 13 that the said respondents are much senior to the present petitioner and their claim ought not to be permitted to be defeated only because of a wrongful promotion granted to the petitioner in the year 1983.

7. As the appointment of the petitioner to the post of Asstt. Head Master made in the year 1983 was not questioned by the respondent no.1 or for that matter by any other teacher before the appropriate forum viz. School Tribunal, the legality of the said appointment cannot be tested or gone into in an appeal filed by the respondent no.1 calling in question the legality of further promotion granted to the petitioner to the post of Head Master in the year 1990. If the petitioner's appointment is taken to be legal and valid, effected in the year 1983 to the post of Asstt.

Head Master, in the absence of a challenge to the same by any other teacher then by virtue of mandate of sub rule (3), the senior most teacher in accordance with Schedule F only could be promoted to the post of Head Master. It is obvious that the petitioner had occupied a place in category ‘B’ of Schedule F since the year 1983 till the year 1990, whereas till the year 1990 the respondent no.1 and all other teachers were placed in category ‘C" i.e.below the petitioner. Thus reckning the seniority in accordance with the Schedule F, it is clear that the petitioner was senior most teacher and thus rightly promoted to the post of Head Master. The submission made by the learned counsel for the respondents 1 and 13 pre-supposes that the appointment of the petitioner to the post of Asstt. Head Master was illegal appointment and the petitioner could not have been promoted on the basis of his caste in a single isolated post. As stated hereinabove, I do not find it permissible to examine the legality of the petitioner’s appointment to the post of Asstt. Head Master as the said appointment was never challenged. If the appointment of the petitioner is held to be legal in the post of Asstt. Head Master, made in the year 1983, then I have no hesitation to conclude that the petitioner being the senior most teacher falling in category ‘B’ of schedule F, he alone was entitled to be appointed to

the post of Head Master of the school. The learned counsel for the respondent no.1 has submitted that in the past when the persons from open category were appointed byr promotion to the post of Asstt. Head Master the Education Officer has declined to grant approval and thus the respondent no.1 and other similarly situated teachers were denied the promotional post.

8. The learned counsel for the respondent nos.1 and 13 have relied upon on an unreported judgment of a learned Single Judge of this court in case of **D.K.Gavali Vs. B.D.Sharma rendered in W.P.No. 8409 of 2005.** In the said case admittedly the petitioner was appointed to the post of Asstt. Head Master by promotion in the reserved category, on the basis of certain directions issued by the Education Officer. As the court found that the promotion granted to the petitioner to the post of Asstt. Head Master was on wrong premises, it was held to be bad and illegal as the post was an isolated post. The learned Single Judge concurred with the view taken by the School Tribunal that the illegal appointment granted to the petitioner to the post of Asstt. Head Master would not create any legal right in favour of the petitioner. The judgment of which reliance is placed does not lay down any ratio that binds this court.

The judgment does not consider the effect of the provisions of rule 3 sub rule 3. The judgment also does not consider the mandate of sub rule 3 and the provisions of schedule F. The judgment appears to have been rendered in peculiar facts of the said case. I am of the clear view that the appointment of the petitioner made in the year 1983 to the post of Asstt. Head Master not being the subject matter of challenge in any proceeding at the behest of respondent no.1 or any other teacher, the legality thereof cannot be gone into. The said appointment will have to be treated as legal and valid and if this be so, then according to rule 3 sub rule 3, the senior most person in accordance with the criteria laid down in schedule F alone need to be appointed by promotion to the post of Head Master. As the petitioner was in category‘B’ and as all other teachers were in category ‘C’ the petitioner need to be treated as senior to the other teachers and thus rightly appointed to the post of Head Master in the year 1990. The School Tribunal has held that as the petitioner was the candidate belonging to Scheduled Caste category, he could not have been granted promotion to the post of Asstt. Head Master, the said post being an isolated post. What is relevant to note is that no one had challenged the promotion of the petitioner granted in the year 1983 to the post of Asstt. Head Master and thus under

the grab of the present appeal, filed by the respondent in the year 1992 questioning the correctness of the promotion granted to the petitioner in the year 1990 to the post of Head Master, the respondent no.1 cannot be permitted to assail the validity of the promotion granted in the year 1983. The School Tribunal has misdirected itself in trying to find out as to whether the petitioner could have been granted promotion to the post of Asstt. Head Master in the year 1983. If no one challenges that promotion, the same holds good and the legality thereof cannot be permitted to re-open after a period of 10 years, in an appeal seeking to question the legality of his further promotion to the post of Head Master. In my opinion, the Tribunal has committed a patent illegality requiring interference at the hands of this court in writ jurisdiction. Hence I proceed to quash and set aside the order passed by the Tribunal. The petition is therefore allowed. The impugned judgment and order passed by the Tribunal in appeal No. 221/92 dated 19-12-1996 is quashed and set aside. Rule made absolute in the above terms with no order as to costs.

9. In view of the disposal of the writ petition, civil application does not survive and the same is also disposed of.

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